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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,748	10/11/2005	Ricky James Gath	GATH0101PUSA	2628
22045 7590 10/01/2008 BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075				
EXAMINER				
SUTTON, ANDREW W				
ART UNIT		PAPER NUMBER		
3765				
MAIL DATE		DELIVERY MODE		
10/01/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/552,748

**Applicant(s)**

GATH, RICKY JAMES

**Examiner**

ANDREW W. SUTTON

**Art Unit**

3765

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10/11/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-893)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 5/31/06

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-6, and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Marchello (US 3,239,842). Marchello teaches a helmet with a support member 30 shaped to cover an ear of the wearer when attached to the helmet comprising a rigid protective outer cover 31 which is integral with the support member; and an inner pocket 33 made of an ear contacting material and designed to accommodate the pinna of the ear of the wearer with an opening in the top and bottom of the support member located at 40 which positively engages the chin strap providing the ear protector against the side of the head when worn by the wear.

As to claim 4, the covering member would be capable of receiving a loudspeaker in the pocket 33.

As to claim 5, the protective device 30 has a tap 32 extending from the top edge and is received in the opening of the helmet to insure it is properly aligned.

As to claim 6, the hear protectors 30 have a convex shape complimentary of the concave recess to approximate the wearer's ears, and the ear protectors 30 are contiguous with the helmet when engaged with chin strap 14.

As to claim 9, the device of Marchello further teaches a helmet 11 with a triangular divided strap 14 and buckle 17 and a pair of ear protectors 30 as in claim 1.

As to claim 10, the method is taught in the apparatus rejection above.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marchello (US 3,239,842) in view of Yagasaki (US 4,633,532). Marchello teaches support member 30 with an outer covering 31 having a juxtaposed opening. Marchello further teaches ear protector with external openings 34. Marchello does not teach the opening having boss circumscribing the opening. Marchello further does not teach the opening having a rotatable means for closing the openings. Yagasaki teaches boss 2i that is lining the opening. Yagasaki further teaches a earpiece openings 20e and 21 e that are rotatably opened and closed. It would have been obvious of ordinary skill in the art to modify the openings of Marchello with that of Yagasaki to provide more structural integrity and to provide the ability to close the openings.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marchello (US 3,239,842) in view of Hildenbrand (US 5,231,704). Marchello teaches the device substantially above including the openings in the bottom and top of the ear

protector for the strap to engage the ear protector. Marchello does not teach the opening in the top being larger than that of the bottom. Hildenbrand teaches a ear protection device including a bottom narrow opening 2 and a wide top opening 1. Hildenbrand further teaches a ear protector being a triangle shape as defined by the strap. It would have been obvious to one of ordinary skill in the art to modify the shape of the device Marcello with that of Hildenbrand to provide ear protection with a device that is lighter.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See form PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW W. SUTTON whose telephone number is (571)272-6093. The examiner can normally be reached on Monday - Thursday 8:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary L. Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AWS  
27 September 2008

/Gary L. Welch/  
Supervisory Patent Examiner, Art Unit 3765